

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF CITY OF ORLANDO**

The City of Orlando files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the City of Orlando seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.<sup>1</sup> The Commission should not interfere with these local policies here. The City of Orlando has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

The City of Orlando has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to households and businesses in our jurisdiction. Additionally, there are currently nine (9) Broadband Service Providers that do business within the City of Orlando and are registered with the City as Communication Services Providers under Chapter 23, of the City of Orlando City Code. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

In response to the NOI, the City of Orlando provides the following information:

**I. *Application Procedures, Forms, Substantive Requirements, and Charges.***

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

The City of Orlando applies the following right-of-way management and facility placement procedures:

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<sup>2</sup> NOI ¶ 14.

Chapter 23 of the Code of the City of Orlando governs the right-of-way utilization for broadband and telecommunications providers in the City of Orlando. See Chapter 23 at <http://library.municode.com/index.aspx?clientID=13349&stateID=9&statename=Florida>.

A summary of the procedures set forth in Chapter 23 are as follows:

1. Providers are required to register with the City of Orlando and provide the following:
  - o Resale certificate issued by Florida Department of Revenue (FDOR)
  - o State Certifications:
    - Certificate of registration issued by Florida Department of Revenue (FDOR); and
    - Certificate of authorization, public convenience and necessity or similar certificate issued by Florida Public Service Commission;
    - Or, If not registered with the FDOR, a Certificate or license issued by Florida Department of State authorizing Company to do business in Florida
  - o Certificate of Insurance evidencing Company's insurance coverage and Security Fund as required under Chapter 23.
2. Application for Right-of-Way Permit:

Submission of:

- o Right-of-Way Permit Application
- o Four sets of standard size plans, drawings or sketches
- o Two sets of Maintenance of Traffic Plans
- o Fees:
  - Aerial \$50 for the first 30 linear feet or fraction thereof of construction in the Right-of-Way, plus \$25 for each 110 linear feet of construction or fraction thereof over 30 linear feet.
  - Underground \$50 for the first 30 linear feet or fraction thereof of construction in the Right-of-Way, plus \$50 for each 100 linear feet of construction or fraction thereof over 30 linear feet.
  - Storage Containers (construction staging) in Right-Of-Way \$50 plus \$10 per day.

Pursuant to City Code, Section 23.02, it is the intent of the City to promote the public health, safety and general welfare by providing for the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the City limits; adopt and administer reasonable rules, regulations and general conditions not inconsistent with State and Federal law, including Section 337.401, Florida Statutes, and in accordance with the provisions of the Federal Telecommunications Act of 1996; and to establish reasonable rules, regulations and general conditions necessary to manage the placement and maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers; and to minimize disruption to the Public Rights-of-Way.

## **II. *Sources of Delays.***

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.<sup>3</sup>

In the City of Orlando, most applications are processed very quickly and the average turnaround timeframes for processing City Right-of-Way applications are three (3) to five (5) business days.

## **III. *Improvements.***

The Commission asks whether there are particular practices that can improve processing.<sup>4</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> NOI ¶¶ 14, 29.

The City of Orlando has recognized a number of practices that have improved the process.

As a condition of allowing the placement or maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, the City provides general rules and regulations to all Communications Services Providers and has developed processes through the City's application for an Engineering Permit, which information can be found online, including any Right-of-Way applications for permits. The City follows and encourages the Communication Services Providers to utilize the Florida Department of Transportation Utilities Accommodation Guide, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways; the Trench Safety Act (Chapter 553, Florida Statutes); the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes); the National Electrical Code or the ANSI National Electrical Safety Code; the Sunshine State One-Call of Florida administration call system; and the City of Orlando's Engineering Standards Manual.

Additionally, the City works with Communications Services Providers to encourage placement of Facilities: (1) underground; (2) with minimal interference to other facilities (including public and private facilities); and (3) if possible to Co-locate and provide joint use with the City and other third parties to minimize disruption to the Rights-of-Way.

#### **IV. *Permitting Charges.***

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;

- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>5</sup>

The Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining Communications Facilities in the Public Rights-of-Way; however, the City reserves the right to require the payment of consideration or regulatory fees by Persons using or occupying the Rights-of-Way in other capacities. Specifically, a Dealer, as defined in City Code, is not required to make payment of any franchise fees, license fees or other user fees to the City. Non-Dealers and those Providers engaged in Pass Through Facilities, as defined by City Code, Chapter 23, and who are not subject to the Local Communications Services Tax imposed pursuant to Florida Statutes, Sections 202.19 and 202.20 are required to pay the City a permit Fee as follows:

- (i) \$2.00 per linear foot up to 52,800 feet, of any underground, and

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<sup>5</sup> NOI ¶ 17.

- (ii) \$1.00 per linear foot up to 52,800 feet, of any aboveground, line cable, fiber optic conduit, duct-bank, or other pathway (“Pathways”) that makes physical use of the City street. Pathways owned by one company which exceed a total length of 52,800 feet shall be subject to a reduced fee of 50 percent of what otherwise would be due in accordance with the portion of Pathway from 52,801 feet to 132,000 feet and 25 percent for the portion exceeding 132,00 feet.

**V. *Local Policy Objectives.***

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>6</sup>

In the City of Orlando, our policies are designed to achieve the following:

The City’s public rights-of-way are a unique and physically limited resource that are critical to the travel and transport of persons and property in the City and must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens. The City’s policies and procedures for use of the rights-of-way recognize the City’s obligation to manage its public rights-of-way in a manner that ensures minimal inconvenience to the public, coordinates its users, maximizes available space, reduces maintenance and costs that the public and facilitates entry of an optimal number of providers of cable, telecommunications and other services in the public interest. The City also recognizes its obligation to its citizens to facilitate the responsible deployment of services and making services broadly available to its citizens while at the same time ensuring public safety, maintenance and repair of roadways,

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<sup>6</sup> NOI ¶ 22.

preventions of public disruption and damage to abutting property and obtaining fair compensation for use of public property.

**VI. *Possible Commission Actions.***

Finally, the Commission asks what actions the Commission might take in this area.<sup>7</sup>

As noted above, the City of Orlando strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

**CONCLUSION**

The City of Orlando urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the City of Orlando, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any

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<sup>7</sup> NOI ¶ 36.

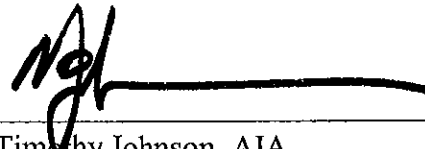


company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

The City of Orlando

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